



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

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Delegation of Authority to Implement and Enforce Additional National Emission Standards for Hazardous Air Pollutants to the Philadelphia Department of Public Health's Air Management Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On October 17, 2011, EPA sent the Philadelphia Department of Public Health's Air Management Services (AMS) a letter acknowledging that AMS's delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) had been updated, as provided for under a previously approved delegation mechanism. EPA sent this letter in response to an AMS request for the update. To inform regulated facilities and the public of AMS's updated delegation of authority to implement and enforce NESHAP, EPA is making available a copy of EPA's letter to AMS through this notice.

DATES: On October 17, 2011, EPA sent AMS a letter acknowledging that AMS's delegation of authority to implement and enforce NESHAP had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Copies of AMS's submittal are also available at the Philadelphia Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

Copies of AMS's request, and of EPA's response, may also be found posted on EPA Region III's website at: <http://www.epa.gov/reg3artd/airregulations/delegate/phdelegation.htm>

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814-2061, or by e-mail at chalmers.ray@epa.gov.

SUPPLEMENTARY INFORMATION: On August 5, 2011, AMS requested that its delegation of authority to implement and enforce Federal NESHAP be updated to include several additional NESHAP. On October 17, 2011, EPA sent AMS a letter acknowledging that AMS's delegation of authority to implement and enforce NESHAP had been updated to include these additional NESHAP, as provided for under a previously approved delegation mechanism. All notifications, applications, reports and other correspondence required pursuant to the delegated NESHAP must be submitted to both the US EPA Region III and to AMS. A copy of EPA's letter to AMS follows:

Mr. Thomas Huynh
Director
Philadelphia Air Management Services
321 University Avenue, 2nd Floor
Philadelphia, PA 19104

Dear Mr. Huynh,

The United States Environmental Protection Agency (EPA) has previously delegated to the Philadelphia Department of Public Health's Air Management Services (AMS) the authority to implement and enforce various federal National Emissions Standards for Hazardous Air

Pollutants (NESHAP), as found at 40 CFR Part 63. (67 FR 4181, January 29, 2002.)¹ EPA's approval of that previous delegation included an approval of an AMS mechanism for obtaining automatic delegation of any future NESHAP regulations which AMS adopted unchanged from the Federal requirements. This mechanism is for AMS to submit a letter requesting additional delegations to EPA.

In a letter dated August 5, 2011, AMS requested "delegation by reference" to implement and enforce the following additional NESHAP for area sources as in 40 C.F.R. Part 63:

1. Subpart BBBBBB - Gasoline Distribution Bulk Terminal, Bulk Plant and Pipeline Facilities
2. Subpart CCCCCC - Gasoline Distribution, Gasoline Dispensing Facilities
3. Subpart EEE - Hazardous Waste Combustors
4. Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating
5. Subpart OOOOOO - Flexible Polyurethane Foam Fabrication and Production
6. Subpart VVV - Publicly Owned Treatment Works (POTW)
7. Subpart WWWWW - Hospital Ethylene Oxide Sterilizers
8. Subpart ZZZZZ - Iron and Steel Foundries

AMS also requested "automatic delegation" of future amendments that EPA promulgates with respect to these NESHAP.

¹ EPA has posted copies of this action at: <http://www.epa.gov/reg3artd/airregulations/delegate/phdelegation.htm>

AMS specified in its request letter that it was seeking delegation of the authority to implement and enforce these additional NESHAP and future amendments that EPA promulgates with respect to these NESHAP under its previously approved mechanism for obtaining delegation of additional NESHAP.

On January 29, 2002, EPA initially delegated to AMS the authority to implement and enforce various NESHAP as found at 40 CFR Part 63. In this action, EPA concluded that AMS had demonstrated, as required, that AMS met the general “up-front” criteria for approval which are set forth at 40 C.F.R. §63.91(d). According to 40 C.F.R. §63.91(d)(2), “[o]nce a State has satisfied the § 63.91(d) up-front approval requirements, it only needs to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent equivalency submittals.”

In its August 5, 2011 request for delegation of additional area source NESHAP, AMS included a full new demonstration that it met the requirements of 40 CFR § 63.91(d). While a full new demonstration was not required, EPA finds that the full new demonstration meets the requirement for a reaffirmation that AMS continues to meet the up-front approval requirements of 40 CFR § 63.91(d).

EPA finds that AMS has met the requirements to be automatically delegated the authority to implement and enforce the eight additional NESHAP for area sources specified in the listing above, as well as any future amendments EPA may promulgate with respect to them. Accordingly, EPA hereby delegates to AMS the authority to implement and enforce these eight

additional NESHAP for area sources, as well as any future amendments EPA may make to them. This delegation to AMS is subject to the same terms of approval as set forth in EPA's initial January 29, 2002 delegation to AMS of the authority to implement and enforce NESHAPs as found at 40 CFR Part 63.

Please note that on December 19, 2008 in *Sierra Club vs. EPA*,² the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued the mandate vacating these SSM exemption provisions, which are found at 40 CFR § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed the SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because AMS incorporated 40 CFR Part 63 by reference, AMS should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in *Sierra Club vs. EPA*.

EPA appreciates AMS's continuing NESHAP implementation and enforcement efforts, and also AMS's decision to take automatic delegation of eight additional and more recent NESHAP for area sources.

² *Sierra Club v. EPA*, 551 F.3rd 1019 (D.C. Cir. 2008)

If you have any questions, please contact me or Ms. Kathleen Cox, Associate Director,
Office of Permits and Air Toxics, at 215-814-2173.

Sincerely,

Diana Esher, Director
Air Protection Division”

This notice acknowledges the update of AMS’s delegation of authority to implement and
enforce NESHAP.

Dated: March 6, 2012

Diana Esher, Director,
Air Protection Division,
Region III.

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